

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENTS WITH
FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENTS

COMPETITIVE PRODUCT PRICES
INBOUND COMPETITIVE PRIME REGISTERED SERVICE
AGREEMENT 1 (MC2020-73)
NEGOTIATED SERVICE AGREEMENT

Docket No.
MC2020-73

**NOTICE OF UNITED STATES POSTAL SERVICE PROVIDING UPDATE
CONCERNING INBOUND COMPETITIVE PRIME
REGISTERED SERVICE AGREEMENT 1
(March 12, 2021)**

On August 17, 2016, the Postal Regulatory Commission (“Commission”) issued Order No. 3471, adding Inbound Market Dominant Registered Service Agreement 1 as a new product to the market dominant product list, and including the Registered Service Agreement within that product.¹ The Inbound Market Dominant Registered Service Agreement 1 is a multilateral agreement between some postal operators about the exchange of certain information in electronic form related to the sending and delivering of registered items pursuant to Article 13 of the Universal Postal Convention. The purpose of the agreement is to upgrade participating postal operators’ service to the benefit of their customers, and in certain circumstances, for the participating postal providers “to remunerate each other for the provision of information in electronic form.”²

¹ PRC Order No. 3471, Order Adding Inbound Market Dominant Registered Service Agreement 1 to the Market Dominant Product List and Approving Type 2 Rate Adjustment, Docket Nos. MC2016-168 and R2016-6, August 17, 2016, at 9.

² See Registered Service Agreement made and entered into December 5, 2005, at 1, Attachment 1 to Notice of United States Postal Service of Filing Revised Version of Inbound Market Dominant Registered

Subsequently, on February 22, 2017, the Commission issued an order acknowledging the United States Postal Service's (Postal Service's) filing of a revised version of the Inbound Market Dominant Registered Service Agreement 1.³ In addition, on July 26, 2017, the Commission issued Order No. 4016, approving additional modifications to the Inbound Market Dominant Registered Service Agreement 1.⁴ Also, the Postal Service filed a number of updates concerning the Inbound Market Dominant Registered Service Agreement 1, especially concerning the list of parties to the agreement.⁵

As a result of Order No. 5437, the agreement was transferred to the competitive product list and included in the competitive product list as the Inbound Competitive PRIME Registered Service Agreement 1.⁶

The Postal Service files this notice to inform the Commission of a recent revision to the Force Majeure rules applicable to the Inbound Competitive PRIME Registered Service Agreement 1 (Force Majeure rules). The Postal Service has not invoked the Force Majeure rules. However, if the Postal Service determines to invoke the Force Majeure rules, such action could potentially affect the remuneration that the Postal Service might receive under the agreement. The revised Force Majeure rules, which the Postal Service is filing under seal, went into effect on January 1, 2021, and include

Service Agreement, and Application for Non-Public Treatment, Docket Nos. MC2016-168 and R2016-6, February 15, 2017.

³ PRC Order No. 3799, Order Acknowledging Revised Version of Inbound Market Dominant Registered Service Agreement, Docket Nos. MC2016-168 and R2016-6, February 22, 2017.

⁴ PRC Order No. 4016, Order Approving Modifications of PRIME Registered Agreement, Docket No. R2016-6, July 26, 2017.

⁵ See, e.g., Notice of United States Postal Service Providing Updates Concerning Parties to Inbound Market Dominant Express Service Agreement 1, Inbound Market Dominant Registered Service Agreement 1, Inbound Market Dominant PRIME Tracked Service Agreement 1, Docket No. R2016-6, June 25, 2020.

⁶ PRC Order No. 5437, Order Approving Transfer of Market Dominant Negotiated Service Agreements to the Competitive Product List, Docket No. MC20202-73, February 19, 2020.

specific procedures concerning how a party to the Inbound Competitive PRIME Registered Service Agreement 1 may invoke Force Majeure and the resulting impact on remuneration.

The Postal Service does not consider it necessary to include revised financial workpapers with this filing, because the Postal Service has not invoked the Force Majeure rules in relation to the Inbound Competitive PRIME Registered Service Agreement 1, and there is no impact on remuneration to the Postal Service pursuant to the agreement when other parties invoke Force Majeure.

A redacted version of the revised Force Majeure rules is included as Attachment 1 to this filing. With respect to the non-public version of the revised Force Majeure rules that the Postal Service is filing under seal, the Postal Service hereby includes an Application for Non-Public Treatment as Attachment 2.

Respectfully submitted,

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ATTACHMENT 2

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. Part 3011, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed separately under seal with the Commission in this docket. The materials consist of the Force Majeure rules applicable to the Inbound Competitive Registered Service Agreement 1 that is the subject of Docket No. MC2020-73 (Force Majeure rules). A redacted copy of the Force Majeure rules is filed with the Notice as Attachment 1.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3011.201(b) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing

in commercial markets. 39 U.S.C. § 504(g)(3)(A).¹ Because the portions of the materials that the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support the Postal Service's determination that these materials are exempt from public disclosure and requests the Commission to grant the Postal Service's application for their non-public treatment.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.²

In the case of the Force Majeure rules applicable to the Inbound Competitive Registered Service Agreement 1, the Postal Service believes that the only third parties with a proprietary interest in the materials are the International Post Corporation (IPC) and the other parties to the PRIME Registered Service Agreement.

¹ The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

² Section 3011.201(b)(2) further states the following:

"(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section."

The Postal Service has already informed the IPC and the other parties to the PRIME Registered Service Agreement, in compliance with 39 C.F.R. § 3011.200(b), of the nature and scope of this filing and the IPC's and the parties to the PRIME Registered Service Agreement's ability to address their confidentiality concerns directly with the Commission.³ Because of language and cultural differences as well as the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operators, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operators. The Postal Service identifies as an appropriate contact person Mr. Rick Brown, Strategic Planning Specialist, Global Business, United States Postal Service, 475 L'Enfant Plaza SW, Room 5677, Washington, DC 20260. Mr. Brown's telephone number is 202-268-3988 and his e-mail address is richard.k.brown@usps.gov.⁴

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

In connection with its Notice filed in this docket, the Postal Service included the Force Majeure rules applicable to the Inbound Competitive Registered Service Agreement 1 that is the subject of Docket No. MC2020-73

³ See Request of United States Postal Service to Add Inbound Market Dominant Registered Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, Docket Nos. MC2016-168 and R2016-6, July 13, 2016, Attachment 4, at 2-3.

⁴ The Postal Service acknowledges that 39 C.F.R. § 3011.201(b)(2)(ii) appears to contemplate only situations where a third party's identification is "sensitive or impracticable" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

(Force Majeure rules). The Force Majeure rules were filed under seal, with a redacted copy filed publicly, after notice, as discussed above, to the IPC and the parties to the PRIME Registered Service Agreement. The Postal Service maintains that the redacted portions of the Force Majeure rules should remain confidential. The Force Majeure rules are available only on the password-protected website of PRIME. The redactions to the Force Majeure rules withhold specific terms and procedures that are commercial information among operators concerning how they are going to apply certain business processes in the event of significant stresses to their networks that could affect their ability to perform under the PRIME Registered Service Agreement. Similarly, in the Postal Service's initial filing in this docket, information concerning quality of service performance was redacted, concerning which the Postal Service filed an application for non-public treatment.⁵

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

If the portions of the Force Majeure rules that the Postal Service determined to be protected from disclosure because of their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that the Postal Service would suffer commercial harm. Information about terms and conditions concerning service performance in relation to various postal operators is commercially sensitive, and the Postal Service does not believe that such information would be disclosed under good business practices.

⁵ Request of United States Postal Service to Add Inbound Market Dominant Registered Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, Docket Nos. MC2016-168 and R2016-6, July 13, 2016, Attachment 4, at 4.

Foreign postal operators that are not parties to the PRIME Registered Service Agreement could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. Competitors could also use the information to assess the terms that apply to the Postal Service under the PRIME Registered Service Agreement, for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Potential customers could also deduce from the Force Majeure rules certain terms and conditions, the disclosure of which might upset the balance of Postal Service negotiations with contract customers by allowing them to negotiate, rightly or wrongly, on the basis of information in the Force Majeure rules.

Information in the Force Majeure rules also is sensitive commercial information of the IPC and the other parties to the Registered Service Agreement. Disclosure of such information could be used by competitors of other parties to the Registered Service Agreement to develop competitive alternatives, to the detriment of other parties to the Registered Service Agreement.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

Harm: Public disclosure of the Force Majeure rules would be used by competitors and customers to the detriment of the Postal Service and foreign postal operators.

Hypothetical: A competing delivery service obtains an unredacted version of the Force Majeure rules from the Commission's website. The competing delivery service analyzes the Force Majeure rules to learn more about the Postal Service's relations with various postal operators. The competing delivery service then revises its own rates and products, as well as its related marketing, based on information in the Force Majeure rules to more effectively compete with the Postal Service, as well as foreign postal operators.

(6) The extent of the protection from public disclosure alleged to be necessary.

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for delivery services and products (including both private sector integrators, as well as foreign postal operators not included in the list of parties to the PRIME Registered Service Agreement), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar services and products (including postal operators not included in the list of parties) should not be provided access to the non-public materials.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3011.401(a). However, because the Postal Service's relationships with foreign postal operators often

continue beyond ten years or decades, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3011.401(b-c).

(8) Any other relevant factors or reasons to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.